

**STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD**

**DIVISION OF WATER RIGHTS**

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In the Matter of License 10881(Application 20060)

**Juliana Mutual Water Company**

**ORDER APPROVING CHANGE IN PLACE OF USE,  
ADDING NEW CONDITIONS AND AMENDING THE LICENSE**

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SOURCE: Unnamed Streams and Pope Creek

COUNTY: Napa

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**WHEREAS:**

1. License 10881 was issued to Buttes Gas and Oil Company on February 15, 1979 pursuant to Application 20060 and was recorded with the County Recorder of Napa on February 21, 1979.
2. License 10881 was subsequently assigned to Juliana Vineyards on June 2, 1992 and then re-assigned to Juliana Mutual Water Company on January 5, 1999.
3. The Settlement Agreement dated March 10, 1995 resolved the litigation among water users within the Putah Creek Watershed upstream of Lake Berryessa, and State Water Resources Control Board (SWRCB) Order 96-002 requires inclusion of terms derived from the agreement in this license.
4. A petition to change the place of use was filed with the SWRCB on October 13, 1997 and the SWRCB has determined that good cause for such change has been shown. Public notice of the change was issued on February 23, 1998 and protest issues have been resolved by adding two terms. The first term requires mitigation for impacts the change may have on wildlife and the second term requires that all necessary Napa County approvals be obtained prior to construction and water use.
5. The SWRCB has determined that the petition for change in place of use does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

6. The license term relating to the continuing authority of the SWRCB should be added to conform to section 780(a), title 23 of the California Code of Regulations.
7. The license term relating to the water quality objectives of the SWRCB should be added to conform to section 780(b), Title 23 of the California Code of Regulations.
8. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A term should be placed in the license making the licensee aware of possible obligations resulting from these acts.
9. The SWRCB is the Lead Agency under the California Environmental Quality Act (CEQA), Public Resources Code 21000 *et seq.* The Division of Water Rights, under delegated authority from the SWRCB, issued a Notice of Exemption for the Change Petition on March 14, 2001.
10. Construction or rehabilitation work may occur for the diversion covered by this license within the bed, channel or bank of the affected water body. A term should be placed in the license making the licensee aware that a streambed alteration agreement with the Department of Fish and Game is required for such work.

**NOW, THEREFORE, IT IS ORDERED THAT LICENSE 10881 IS AMENDED TO READ AS FOLLOWS:**

1. Paragraph 3 of the license is amended to read as follows:

Recreational and stockwatering uses at Big Lake; irrigation and frost protection of 1,500 acres, and stockwatering, all within a gross area of 4,703 acres within Sections 2, 3, 4, 5, 7, 8, 9, 10, 11, 15, 16, 17, 18, 20, 21, 22, 27, and 28, T9N, R5W, MDB&M and Sections 33, 34, 35, T10N, R5W, MDB&M, as shown on map dated September 1997 on file with the SWRCB. The area served under this license and licenses issued pursuant to Applications 11236, 12851, 13597, 14024, 15164, 15934, 16267, 20061, 23264 and 24045 shall not exceed a net 1,893 acres within the gross of 4,703 acres.

3. The continuing authority condition shall be added to read as follows:

Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating

waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

4. The water quality objectives condition shall be added as follows:

The quantity of water diverted under this license is subject to modification by the SWRCB if, after notice to the licensee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

5. License 10881 is amended to include the following Endangered Species condition:

This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable

Endangered Species Act for the project authorized under this license. (0000014)

6. For wildlife habitat enhancement, licensee shall continue to implement the revegetation plan submitted by licensee's letter dated July 19, 1991 (contained in the file for Application 22042). A minimum of 520 trees shall be planted. To be considered successful, each plant must be self-sustaining for at least three years. If mortality causes the number of plants to decline below the target survival rate of 75 percent, new plants shall be planted until the minimum 75 percent survival rate is attained. A report on the status and success of the revegetation program shall be submitted annually to the SWRCB until the 75 percent survival rate is attained. After completion of the tree-planting program, photograph documentation showing the trees and the stream corridor shall be submitted to the Chief of the Division of Water Rights. (0000040)
7. For the passage and protection of wildlife in the area, license shall not clear vegetation, construct fencing, or otherwise disturb the existing drainage of the stream channels for a minimum lateral distance of 50 feet from the top of the bank on each side of all blue-line streams as shown on the U.S. Geological Survey 7.5 minute quadrangle maps St. Helena and Aetna Springs. This condition shall apply to all vineyard development occurring after the issuance of this Order for change in the place of use. (0000040)
8. No construction shall be commenced and no water shall be used under this license until all necessary Napa County approvals have been obtained. Development can be programmatic in nature. A copy of the Napa County Approval, and any erosion control or vegetation preservation plans shall be forwarded to the SWRCB. (000J045)
9. Licensee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565 and required by Order WR 96-02:
  - (1) Licensee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this license for noncompliance with the terms of the Agreement.
  - (2) Diversion of water under this license shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The licensee shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.
  - (3) Licensee shall measure reservoir storage at the beginning and end of the Accumulation Season. Contribution to Annual Depletion shall be determined to be the change in storage during the Accumulation Season. The licensee shall pay for the cost of installing and maintaining any water level measuring device required by the SWRCB.

(3b) If reasonably determined to be necessary by the watermaster to determine Annual Depletion, Big Lake (Dick Week Reservoir) shall have a water level measuring device that documents continuous reservoir levels during the Accumulation Season, purchased (and replaced if necessary) by the watermaster and installed and maintained at the expense of the licensee.

(4) Licensee shall install at licensee's own cost such additional or other measurement devices as are necessary to measure actual depletions, if the watermaster determines that additional measures are necessary, consistent with Section 3.A.3 (Measuring Devices) of the Agreement.

(5) Licensee shall report to the watermaster annually, on or about September 1, the amount of water diverted to storage under this license at the beginning and end of the Accumulation Season as required by the watermaster and the amount of water diverted directly for use under this license. Such annual reports shall be made in writing on forms approved by the watermaster.

(6) Licensee shall allow the watermaster reasonable access to the project covered by this license to inspect measuring equipment and to verify compliance to terms and conditions of the Agreement, upon 48-hour prior notice and upon such reasonable conditions as licensee may prescribe.

(7) Licensee is hereby put on notice that there may be years when diversion of water under this license will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this license.

(8) In the event Allowable Depletion is exceeded in any year, licensee shall release water diverted to storage to the extent necessary to bring the Allowable Depletion into compliance or shall curtail direct diversion of water during ensuing seasons until the amount of the exceedance is paid back consistent with the repayment provisions of the Agreement. Licensee's obligation to release water from storage shall be governed by the repayment provisions of the Agreement. (Agreement pp. 9, 10, and 11)

(9) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa: (a) does not drop below 640,000 acre-feet in storage as of May 1, licensee shall have three years, starting in the next Accumulation Season, to make up or repay licensee's excess diversions; or (b) does not reach 640,000 acre-feet of storage as of May 1, licensee shall have one year, starting in the next Accumulation Season, to make up or repay licensee's excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, licensee shall be excused from any further obligation for repayment of the overage.

(10) Licensee shall provide watermaster prior notice of any repayment. Repayment may be made either by releases from storage, curtailment of direct diversion, or by the provision of water from other sources.

(11) Licensee shall notify the watermaster of any change in ownership of land, changes in the water right, or changes in address related to the license.

(12) Licensee is hereby put on notice of licensee's right, upon reasonable prior notice, to inspect and to copy, at licensee's own expense, all records and reports of the watermaster.

Inclusion in the license of certain provisions of the Agreement shall not be construed as disapproval of other provisions of the Agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this license.

(0000024)

The SWRCB shall have continuing authority under article X, section 2 of the California Constitution, Water Code sections 100 and 275, and the common law public trust doctrine over this license to delete, revise, amend or adopt new terms or conditions to:


(1) implement the March 10, 1995 Condition 12 Settlement Agreement and any amendments to the Agreement and (2) make the terms or conditions consistent with any order of the superior court. No action shall be taken pursuant to this paragraph unless the SWRCB provides notice to affected parties and provides an opportunity for a hearing.

(0000012)

10. If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.
11. License 10881 shall contain all other terms and conditions presently in License 10881 or updated terms to reflect present SWRCB policies.

Dated: JAN 23 2002

STATE WATER RESOURCES CONTROL BOARD

*for*   
Edward C. Anton, Chief  
Division of Water Rights

**CERTIFIED MAIL**

Juliana Mutual Water Company  
2424 Barnett Road  
St. Helena, CA 94574

**REGULAR MAIL**

County Recorder  
County of Napa  
1195 Third Street, Room 110  
Napa, CA 94559-3084



STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

**Amended License for Diversion and Use of Water**

APPLICATION 20060

PERMIT 14516

LICENSE 10881

Page 1 of 6

**THIS IS TO CERTIFY, That**

Juliana Mutual Water Company  
2424 Barnett Road  
St. Helena, CA 94574

Has the right to use waters of **(1) (3) Pope Creek and (2) (4) 2 Unnamed Streams in Napa County** tributary to **(2) (4) Pope Creek thence (1) (3) Putah Creek thence Lake Berryessa**

for the following purpose: **Irrigation, Frost Protection, Heat Control, Stockwatering and Recreational uses**

Amended **License 10881** supersedes the license originally issued on **February 15, 1979, which was** perfected in accordance with the laws of California, the regulations of the State Water Resources Control Board (SWRCB) or its predecessor, and the terms of **Permit 14516**. The priority of this right dates from March 30, 1961. Proof of maximum beneficial use of water pursuant to **Application 20060** was made as of **June 22, 1976**.

The amount of water that may be used under this license is limited to the amount actually beneficially used for the stated purposes and shall not exceed **500 acre-feet per annum to be collected from November 1 of each year to July 1 of the succeeding year. The maximum withdrawal in any one year under this license, together with that withdrawn under licenses issued pursuant to Applications 11236, 14024, 15164, 16267, 20061 and 24045 shall not exceed 2,040 acre-feet.**

The maximum rate of diversion to offstream storage under this right shall not exceed 2.25 cubic feet per second from Pope Creek and 9 cubic feet per second from point (4) on Unnamed Stream.

The total quantity of water diverted under this license, together with that diverted under licenses issued pursuant to Applications 11236, 14024, 15164, 16267, 20061 and 24045 shall not exceed 2,000 acre-feet per year.

This license does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage or for any other purpose.

Unless a change is approved by the SWRCB, water used under this license may be diverted, rediverted, stored and used only as specified below:

**THE POINTS OF DIVERSION TO OFFSTREAM STORAGE ARE LOCATED:**

- (1) Pope Creek: South 4,480 feet and West 2,410 feet from NE corner of fractional Section 9, T9N, R5W, MDB&M, being within projected SW  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of Section 9,
- (3) Pope Creek: North 150 feet and West 25 feet from S  $\frac{1}{4}$  corner of Section 10, T9N, R5W, MDB&M, being within SE  $\frac{1}{4}$  of SW  $\frac{1}{4}$  of Section 10, and



- (4) Unnamed Stream: South 1,420 feet and West 4,060 feet from NE corner of fractional Section 9, T9N, R5W, MDB&M, being within SW  $\frac{1}{4}$  of NW  $\frac{1}{4}$  of Section 9.

**THE POINT OF DIVERSION, REDIVERSION AND PLACE OF STORAGE IS LOCATED:**

- (2) Unnamed Stream: North 300 feet and East 1,200 feet from W  $\frac{1}{4}$  corner of Section 10, T9N, R5W, MDB&M, being within SW  $\frac{1}{4}$  of NW  $\frac{1}{4}$  of Section 10,

**A DESCRIPTION OF THE LANDS OR THE PLACE WHERE WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:**

Recreational and stockwatering uses at Big Lake; irrigation and frost protection of 1,500 acres, and stockwatering, all within a gross area of 4,703 acres within Sections 2, 3, 4, 5, 7, 8, 9, 10, 11, 15, 16, 17, 18, 20, 21, 22, 27, and 28, T9N, R5W, MDB&M and Sections 33, 34, and 35, T10N, R5W, MDB&M, as shown on map dated September 1997 on file with the SWRCB. The area served under this license and licenses issued pursuant to Applications 11236, 12851, 13597, 14024, 15164, 15934, 16267, 20061, 23264 and 24045 shall not exceed a net 1,893 acres within the gross of 4,703 acres.

Licensee shall install and maintain an outlet pipe of such size and at such location as is specified by the State Department of Water Resources.

For wildlife habitat enhancement, licensee shall continue to implement the revegetation plan submitted by licensee's letter dated July 19, 1991 (contained in the file for Application 22042). A minimum of 520 trees shall be planted. To be considered successful, each plant must be self-sustaining for at least three years. If mortality causes the number of plants to decline below the target survival rate of 75 percent, new plants shall be planted until the minimum 75 percent survival rate is attained. A report on the status and success of the revegetation program shall be submitted annually to the SWRCB until the 75 percent survival rate is attained. After completion of the tree-planting program, photograph documentation showing the trees and the stream corridor shall be submitted to the Chief of the Division of Water Rights.  
(0000040)

For the passage and protection of wildlife in the area, license shall not clear vegetation, construct fencing, or otherwise disturb the existing drainage of the stream channels for a minimum lateral distance of 50 feet from the top of the bank on each side of all blue-line streams as shown on the U.S. Geological Survey 7.5 minute quadrangle maps St. Helena and Aetna Springs. This condition shall apply to all vineyard development occurring after the issuance of this Order for change in the place of use.  
(0000040)

No construction shall be commenced and no water shall be used under this license until all necessary Napa County approvals have been obtained. Development can be programmatic in nature. A copy of the Napa County Approval, and any erosion control or vegetation preservation plans shall be forwarded to the SWRCB.  
(000J045)

Licensee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565 and required by SWRCB Order WR 96-002:

- (1) Licensee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this license for noncompliance with the terms of the Agreement.
- (2) Diversion of water under this license shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The licensee shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.

- (3) Licensee shall measure reservoir storage at the beginning and end of the Accumulation Season. Contribution to Annual Depletion shall be determined to be the change in storage during the Accumulation Season. The licensee shall pay for the cost of installing and maintaining any water level measuring device required by the SWRCB.
- (3b) If reasonably determined to be necessary by the watermaster to determine Annual Depletion, Big Lake (Dick Week Reservoir) shall have a water level measuring device that documents continuous reservoir levels during the Accumulation Season, purchased (and replaced if necessary) by the watermaster and installed and maintained at the expense of the licensee.
- (4) Licensee shall install at licensee's own cost such additional or other measurement devices as are necessary to measure actual depletions, if the watermaster determines that additional measures are necessary, consistent with Section 3.A.3 (Measuring Devices) of the Agreement.
- (5) Licensee shall report to the watermaster annually, on or about September 1, the amount of water diverted to storage under this license at the beginning and end of the Accumulation Season as required by the watermaster. Such annual reports shall be made in writing on forms approved by the watermaster.
- (6) Licensee shall allow the watermaster reasonable access to the project covered by this license to inspect measuring equipment and to verify compliance to terms and conditions of the Agreement, upon 48-hour prior notice and upon such reasonable conditions as licensee may prescribe.
- (7) Licensee is hereby put on notice that there may be years when diversion of water under this license will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this license.
- (8) In the event Allowable Depletion is exceeded in any year, licensee shall release water diverted to storage to the extent necessary to bring the Allowable Depletion into compliance. Licensee's obligation to release water from storage shall be governed by the repayment provisions of the Agreement. (Agreement pp. 9, 10, and 11)
- (9) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa:  
(a) does not drop below 640,000 acre-feet in storage as of May 1, licensee shall have three years, starting in the next Accumulation Season, to make up or repay licensee's excess diversions; or (b) does not reach 640,000 acre-feet of storage as of May 1, licensee shall have one year, starting in the next Accumulation Season, to make up or repay licensee's excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, licensee shall be excused from any further obligation for repayment of the overage.
- (10) Licensee shall provide watermaster prior notice of any repayment. Repayment may be made either by releases from storage, curtailment of direct diversion, or by the provision of water from other sources.
- (11) Licensee shall notify the watermaster of any change in ownership of land, changes in the water right, or changes in address related to the license.
- (12) Licensee is hereby put on notice of licensee's right, upon reasonable prior notice, to inspect and to copy, at licensee's own expense, all records and reports of the watermaster.

Inclusion in the license of certain provisions of the Agreement shall not be construed as disapproval of other provisions of the Agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this license.

(0000024)

The SWRCB shall have continuing authority under article X, section 2 of the California Constitution, Water Code sections 100 and 275, and the common law public trust doctrine over this license to delete, revise, amend, or adopt new terms or conditions to: (1) implement the March 10, 1995 Condition 12 Settlement Agreement and any amendments to the Agreement and (2) make the terms or conditions consistent with any order of the superior court. No action shall be taken pursuant to this paragraph unless the SWRCB provides notice to affected parties and provides an opportunity for a hearing.

(0000012)

*The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.*

*Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the SWRCB.*

*Licensee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by the SWRCB, reasonable access to project works to determine compliance with the terms of this license.*

*Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.*

*The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.*

*The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.*

*The quantity of water diverted under this license is subject to modification by the SWRCB if, after notice to the licensee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.*

*This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.*

*If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.*

*This license is granted and the licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:*

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the SWRCB.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

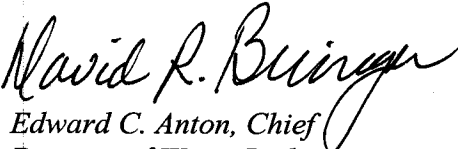
Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD

*for*   
Edward C. Anton, Chief  
Division of Water Rights

Dated: JAN 23 2002

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
STATE WATER RESOURCES CONTROL BOARD  
**DIVISION OF WATER RIGHTS**

**ORDER**

APPLICATION 20060

PERMIT 14516

LICENSE 10881

ORDER ALLOWING CHANGE IN PURPOSE OF USE

WHEREAS:

1. License 10881 was issued to Buttes Gas & Oil Co. and was recorded with the County Recorder of Napa County on February 21, 1979 in Volume 1115, Page 335.
2. A petition for change in purpose of use has been filed with the State Water Resources Control Board and said Board has determined that good cause for such change has been shown.
3. The Board has determined that the petitioned change does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The purposes of use under this license shall be as follows:

Frost Protection, Heat Control, Irrigation, Stockwatering and Recreational

Dated: **DECEMBER 16 1981**



Raymond Walsh, Chief  
Division of Water Rights



STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

## License for Diversion and Use of Water

APPLICATION 20060

PERMIT 14516

LICENSE 10881

**THIS IS TO CERTIFY, That**

BUTTES GAS AND OIL COMPANY

C/O JAMES C. HANSON, CONSULTING CIVIL ENGINEER,  
921 - 11TH STREET, SUITE 400, SACRAMENTO, CALIFORNIA 95814

HAS made proof as of JUNE 22, 1976 (the date of inspection)  
to the satisfaction of the State Water Resources Control Board of a right to the use of the water of  
(1)(3) POPE CREEK (2)(4) UNNAMED STREAM IN NAPA COUNTY

tributary to (1)(3) PUTAH CREEK THENCE YOLO BY-PASS (2)(4) POPE CREEK THENCE  
PUTAH CREEK THENCE YOLO BY-PASS

for the purpose of IRRIGATION, STOCKWATERING AND RECREATIONAL USES  
under Permit 14516 of the Board and that the right to the use of this water has been perfected  
in accordance with the laws of California, the Regulations of the Board and the permit terms; that the  
priority of this right dates from MARCH 30, 1961 and that the amount of water to which  
this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated  
purposes and shall not exceed FIVE HUNDRED (500) ACRE-FEET PER ANNUM, TO BE COLLECTED FROM  
NOVEMBER 1 OF EACH YEAR TO JULY 1 OF THE SUCCEEDING YEAR. THE MAXIMUM RATE OF  
DIVERSION TO OFFSTREAM STORAGE UNDER THIS RIGHT SHALL NOT EXCEED 2.25 CUBIC FEET PER  
SECOND FROM POPE CREEK AND 9 CUBIC FEET PER SECOND FROM POINT (4). MAXIMUM WITH-  
DRAWAL UNDER THIS RIGHT AND THOSE RIGHTS INITIATED BY APPLICATIONS 11236, 14024,  
15164, 16267, AND 20061 SHALL NOT EXCEED 1,630 ACRE-FEET PER YEAR.

THE POINTS OF DIVERSION OF SUCH WATER ARE LOCATED:

- (1) POPE CREEK, POINT OF DIVERSION TO OFFSTREAM STORAGE: SOUTH 4,480 FEET AND WEST 2,410 FEET FROM NE CORNER OF FRACTIONAL SECTION 9, T9N, R5W, MDB&M, BEING WITHIN PROJECTED SW1/4 OF SE1/4 OF SAID SECTION 9,
- (2) UNNAMED STREAM, POINT OF DIVERSION AND POINT OF REDIVERSION OF WATER FROM POINTS (1), (3) AND (4): NORTH 300 FEET AND EAST 1,200 FEET FROM W1/4 CORNER OF SECTION 10, T9N, R5W, MDB&M, BEING WITHIN SW1/4 OF NW1/4 OF SAID SECTION 10,
- (3) POPE CREEK, POINT OF DIVERSION TO OFFSTREAM STORAGE: NORTH 150 FEET AND WEST 25 FEET FROM S1/4 CORNER OF SECTION 10, T9N, R5W, MDB&M, BEING WITHIN SE1/4 OF SW1/4 OF SAID SECTION 10, AND
- (4) UNNAMED STREAM, POINT OF DIVERSION TO OFFSTREAM STORAGE: SOUTH 1,420 FEET AND WEST 4,060 FEET FROM NE CORNER OF FRACTIONAL SECTION 9, T9N, R5W, MDB&M, BEING WITHIN SW1/4 OF NW1/4 OF SAID SECTION 9.

THIS LICENSE DOES NOT AUTHORIZE COLLECTION OF WATER TO STORAGE OUTSIDE OF THE SPECIFIED SEASON TO OFFSET EVAPORATION AND SEEPAGE LOSSES OR FOR ANY OTHER PURPOSE.

THE QUANTITY OF WATER DIVERTED UNDER THIS LICENSE IS SUBJECT TO MODIFICATION BY THE STATE WATER RESOURCES CONTROL BOARD, IF, AFTER NOTICE TO THE LICENSEE AND AN OPPORTUNITY FOR HEARING, THE BOARD FINDS THAT SUCH MODIFICATION IS NECESSARY TO MEET WATER QUALITY OBJECTIVES IN WATER QUALITY CONTROL PLANS WHICH HAVE BEEN OR HEREAFTER MAY BE ESTABLISHED OR MODIFIED PURSUANT TO DIVISION 7 OF THE WATER CODE. NO ACTION WILL BE TAKEN PURSUANT TO THIS PARAGRAPH UNLESS THE BOARD FINDS THAT (1) ADEQUATE WASTE DISCHARGE REQUIREMENTS HAVE BEEN PRESCRIBED AND ARE IN EFFECT WITH RESPECT TO ALL WASTE DISCHARGES WHICH HAVE ANY SUBSTANTIAL EFFECT UPON WATER QUALITY IN THE AREA INVOLVED, AND (2) THE WATER QUALITY OBJECTIVES CANNOT BE ACHIEVED SOLELY THROUGH THE CONTROL OF WASTE DISCHARGES.

*Licensee shall allow representatives of the Board and other parties, as may be authorized from time to time by the Board, reasonable access to project works to determine compliance with the terms of this license.*

*Pursuant to California Water Code Section 100 all rights and privileges under this license, including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.*

*This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this license with a view to minimizing waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.*

*Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the Board.*

*The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.*

*This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:*

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State.